S226036

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CITY OF SAN BUENAVENTURA,
Plaintiff, Cross-Defendant, and Respondent/Cross-Appellant,

vs.

UNITED WATER CONSERVATION DISTRICT AND BOARD OF DIRECTORS OF UNITED WATER CONSERVATION DISTRICT,
Defendants, Cross-Complainants, and Appellants/Cross Respondents.

APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF UNITED WATER CONSERVATION DISTRICT

AMICUS CURIAE BRIEF IN SUPPORT OF UNITED WATER CONSERVATION DISTRICT

After a Decision by the Second Appellate District, Division Six
Case No. B251810

Reversing a Judgment of the Superior Court of Santa Barbara County
Case Nos. VENCI-00401714 AND 1414739
Honorable Thomas P. Anderle, Judge Presiding

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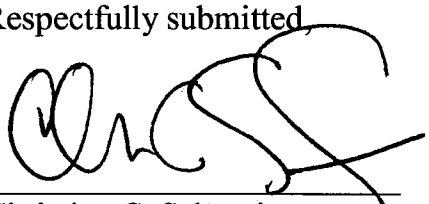
CERTIFICATE OF AUTHORSHIP

In accordance with Rule 8.200(c)(3), the undersigned hereby states that the proposed amicus brief herein was authored solely by the counsel for the Farm Bureau of Ventura County, and no person or entity outside of the Farm Bureau of Ventura County made any monetary contribution to assist its preparation.

Dated: November 11, 2015

Respectfully submitted,



Christian C. Scheuring
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APPLICATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE FARM BUREAU OF VENTURA COUNTY IN SUPPORT OF UNITED WATER CONSERVATION DISTRICT

I. INTRODUCTION

The Farm Bureau of Ventura County ("Farm Bureau") files this application for leave to file an *amicus curiae* brief in this case, solely in order to address the second of two questions posed by the Court for briefing and argument: namely, does the rate ratio mandated by Water Code section 75594 violate Proposition 218 or Proposition 26? In its proposed *amicus curiae* brief, Farm Bureau will discuss a narrow point, arguing that *in the event* a court applies Proposition 218 or Proposition 26, neither constitutional provision causes a facial infirmity in Water Code section 75594. In doing so, Farm Bureau hopes to provide the Court with perspective on Water Code section 75594, a statute of statewide application which is underpinned by important policy considerations that relate to agriculture and the environment in California. This application is filed pursuant to Rule 8.520(f) of the California Rules of Court.

II. INTEREST OF APPLICANT FARM BUREAU OF VENURA COUNTY

Founded in 1914, Farm Bureau is an independent, non-partisan organization that is not affiliated with any government body. It acts as an advocate for Ventura County's agricultural industry, promoting policies and fostering community action intended to preserve that industry's

sustainability and vitality. The organization also provides information, research, insurance services, and other benefits to its nearly 1,300 members, of which approximately 900 are engaged in production agriculture within Ventura County. Many of these members are within the service area of the United Water Conservation ("District"), and use groundwater on their farms. Among other things, Farm Bureau publishes a monthly newsletter, as well as the quarterly *Central Coast Farm & Ranch* magazine, and disseminates information about agriculture through its website and various social media outlets.

The Farm Bureau has a direct and important interest in this case because its membership of family farmers and ranchers are dependent upon reliable and affordable water supplies in Ventura County, including groundwater. Water Code section 75594 is a key statutory element in groundwater rate-setting for California's Water Conservation Districts, and its command directly affects Farm Bureau members within Ventura County who use groundwater. An adverse decision on the issue briefed in this proposed *amicus curiae* submission could effectively strip Ventura County farmers of their access to groundwater – and for that matter, many of California's farmers and ranchers in a similar situation - because groundwater is a primary input into farm productivity at the same time the farm sector is quite price-sensitive to changes in water rates.

III. HOW THE PROPOSED AMICUS CURIAE BRIEF WILL ASSIST THE COURT IN DECIDING THE MATTER

The Court has limited the issues to be briefed and argued in this case to two, the second of which appears to potentially involve a question not only as to the as-applied constitutionality of Water Code section 75594 in this case, but also the facial constitutionality of Section 75594. The City of San Buenaventura ("City") has spent considerable time addressing the latter aspect of Section 75594. Farm Bureau intends to provide an agricultural perspective in its *amicus curiae* brief as to precisely this issue – whether and under what circumstances the Court ought to approach Section 75594's facial constitutionality in this case, and what factors ought to inform its decision.

Additionally, through the proposed *amicus curiae* brief, Farm Bureau seeks to inform the Court of the public values inherent in agricultural water use, values which support Water Code section 75594. As well, Farm Bureau wishes to point out the potential precedential implications of any decision about Section 75594's facial constitutionality, which may bear upon the continued viability of existing California farms and ranches, and the ability of California farmers and ranchers to continue to produce a safe, locally grown, and adequate food supply. Having done so now, Farm Bureau respectfully requests this Court's leave to file the attached proposed *amicus curiae* submission.

IV. RULE 8.520(f) STATEMENT

No party or counsel for any party authored the proposed brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the proposed amicus brief. No persons other than the *amicus curiae*, its members, or its counsel has made a monetary contribution intended to fund the preparation or submission of the *amicus* brief.

BRIEF OF AMICUS CURIAE FARM BUREAU OF VENTURA COUNTY IN SUPPORT OF APPELLANT UNITED WATER CONSERVATION DISTRICT

AMICUS CURIAE BRIEF

I. INTRODUCTION

The Court has asked the parties in this case to brief the question of whether the rate ratio mandated by Water Code section 75594 violates Proposition 218 or Proposition 26, important provisions of the California Constitution. In its papers, the City of San Buenaventura ("City") brings a facial challenge to the constitutionality of Water Code section 75594.[1] However, the City offers no logic that would completely foreclose the statute's application – under any and all circumstances – alongside a proper application of Proposition 218 or Proposition 26.[2] This much is required, for courts are loathe to decide constitutional issues – especially facial challenges – in the absence of true need. As briefed in greater detail below, the Farm Bureau of Ventura County ("Farm Bureau") respectfully submits that this Court should reject the City's facial challenge, and join in a review

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[1] For the sake of brevity, Farm Bureau will not repeat the text of Water Code section 75594, other than to observe as all other parties have that in this case it applies to require M&I groundwater charges to reflect no less than a 3:1 ratio over agricultural groundwater charges, and no more than a 5:1 ratio. All references to code sections in this brief are to the Water Code, unless otherwise specified.

[2] Cal. Const., art. XIII D (Proposition 218) and Cal. Const., art. XIII C (Proposition 26).

of the trial court's decisions on issues meaningfully developed below.

II. INTEREST OF AMICUS CURIAE

Founded in 1914, Farm Bureau of Ventura County ("Farm Bureau") is an independent, non-partisan organization that is not affiliated with any government body. It acts as an advocate for Ventura County's agricultural industry, promoting policies and fostering community action intended to preserve that industry's sustainability and vitality. The organization also provides information, research, insurance services and other benefits to its nearly 1,300 members, of which approximately 900 are engaged in production agriculture within Ventura County. Many of these members are within the service area of the United Water Conservation District ("District"), and use groundwater on their farms. Among other things, Farm Bureau publishes a monthly newsletter, as well as the quarterly *Central Coast Farm & Ranch* magazine, and disseminates information about agriculture through its website and various social media outlets.

The Farm Bureau has a direct and important interest in this case because its membership of family farmers and ranchers are dependent upon reliable and affordable water supplies, including groundwater pumped within the service area of the District. An adverse decision on the issue briefed in this proposed *amicus curiae* submission could effectively strip Ventura County farmers and ranchers of groundwater supplies within the District's service area, because groundwater is a primary input into farm

productivity within Ventura County at the same time those farms are quite price-sensitive to changes in water rates. More broadly, such an adverse decision could prevent the statewide application of the Legislature's considered policy choice in Section 75594, restricting access to groundwater by a large segment of California's agricultural economy.[3]

III. STATEMENT OF THE CASE

The facts and circumstances of this case are well briefed by the parties in this case, and Farm Bureau will not provide a separate statement of facts herein.

IV. ARGUMENT

A. The Court Should Avoid Questions of Facial Constitutionality

This Court should construe Section 75594 as constitutional.[4] It is hornbook law that a statute should be construed as constitutional, if possible. (See *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 594.) This Court has stated it thus:

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[3] There are presently 13 duly-constituted Water Conservation Districts within California. ("What's So Special About Special Districts: A Citizen's Guide To Special Districts in California", 4th ed. October 2010, California Senate Local Governance Committee, accessed on November 10, 2015, at http://www.csda.net/wp-content/uploads/2013/04/WhatsSoSpecial_2010.pdf.)

[4] This brief is limited to the second question posed by the Court for briefing and argument.

> In considering the constitutionality of a legislative act we presume its validity, resolving all doubts in favor of the [a]ct. Unless conflict with a provision of the state or federal Constitution is clear and unquestionable, we must uphold the [a]ct.

(*Ibid.*; see also *Hutnick v. United States Fidelity & Guarantee Co.* (1988) 47 Cal.3d 456, 466 (familiar rule of construction that statutes should be interpreted in a manner which avoids constitutional difficulties).) In this case, therefore, the Court should be guided by the question of whether the City has demonstrated that it is impossible for the District to comply with Section 75594 at the same time it is faithful to Proposition 218 and Proposition 26.

Moreover, a court should not decide the question of whether a statute is constitutional if alternative grounds are available to dispose of the issues in the case. (See *California State Electronics Assn. v. Zeos Int. Ltd.* (1996) 41 Cal.App. 4th 1270, 1274.)

B. Section 75594 Is Facially Constitutional Because It Presents No Universal Conflict With Either Proposition 218 or Proposition 26

Even were this Court to decide on Section 75594's universal application against the California Constitution, the Court would find the statute facially constitutional. This is because the City has offered no logic that discounts the application of Section 75594 against either Proposition

218 or Proposition 26 under *any and all* circumstances.[5] As the United States Supreme Court has noted, a facial challenge to a legislative act is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exist under which the Act would be valid." (*United States v. Salerno* (1987) 481 U.S. 739, 745.) The fact that an act "might operate unconstitutionally under one set of circumstances is insufficient to render it wholly invalid[.]" (*Id.*) The City's argument falls far short of this standard.

Indeed, as will be argued below, with respect to Section 75594, there may be some circumstances in which the evidence does justify a 3:1 ratio of M&I to agricultural rates,[6] a situation in which Section 75594 would be wholly consistent with Proposition 218's (or Proposition 26's)[7] requirements. The point here is that both Proposition 218 and Proposition

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[5] The City states categorically that a 3:1 rate ratio "cannot satisfy our Constitution's demands regardless of whether Proposition 218 or Proposition 26 controls. (City's Reply Brief, p. 10.) This would appear to require rigorous support, as opposed to the City's mere *ipse dixit*.

[6] The City appears to admit as much, at least in its Opening Brief, where it leaves the door open for costs that "by chance or artifice" are within the range which is established by Section 75594. (City's Opening Brief, pp. 63-64.) It also makes the logical error discussed in fn. 8, *infra*, that a district is empowered only to finance a certain rate structure – for Section 75594, a 3:1 to 5:1 rate structure – through Proposition 218-restricted funds. (*Ibid.*)

[7] It bears not here that the analysis under Proposition 26 does not so much require any particular relationship between costs and fees or charges *per se*, as it does potentially require a voter-approval requirement.

26 require *evidentiary* analysis; any reconciliation of the statute with Proposition 218 or Proposition 26 necessarily depends upon an analysis of *the facts at bar*. To the extent that Proposition 218 or 26 may apply to ratemaking which is consistent with Section 75594, without the application of facts, it is impossible to hold that a 3:1 ratio (or a 5:1 ratio, or anything else) is *per se* unconstitutional under either of these constitutional commands.

C. The Voters Did Not "Impliedly Repeal" Section 75594

In support of its argument that the voters, in enacting Proposition 218, impliedly repealed Section 75594, the City states that the latter presents a "flatly inconsistent" duty with the undoubtedly superior constitutional command of the former. (City's Reply Brief, p. 31.) Farm Bureau agrees that the commands of the California Constitution are superior to statute, but believes the City fatally overstates the scope of the potential conflict between Propositions 218 and 26 on the one hand, and Section 75594 on the other.

Correctly, the Court of Appeal below cited to a well-known rule of construction that courts "are required to try to harmonize constitutional language with that of existing statutes if possible." (Opinion, p. 24, citing *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal. App. 4th 1182, 1192.) Under that rule, the Court observed, if "it is possible to reconcile the language of Proposition 218 with

[section 75594's mandatory rate ratio] existing at the time of its passage, we must do so." (*Ibid.*) That rule does not just *disfavor* the implied repeal of a pre-existing statute, as the City has briefed, but it operates to *prevent* repeal unless it is simply *not possible* to reconcile that pre-existing statute with new constitutional language.

Here, contrary to the City's assertion that Section 75594 is "flatly inconsistent" with Proposition 218, there is some room for potential ratemaking in which a cost-accounting analysis will justify a 3:1 ratio, or a 4:1 ratio, or even a 5:1 ratio. Or at least the City has not foreclosed the possibility, by demonstrating an inescapable and final logic which proves that 3:1 (or 4:1, or 5:1) never "pencils out" in a cost-accounting for ratemaking.[8] In simpler terms, it is simply not true that Proposition 218's

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[8] Nor, for that matter, has the City even established that strict cost-accounting is the only basis upon which a rate structure may be founded. Specifically, there is no reason to believe that the District – or any hypothetical district similarly situated – could not support a 3:1 rate structure with non-Proposition 218-restricted funds, as a district may raise revenue from many other means that do not involve a property-related fee or charge. Simply put, Proposition 218 is no bar to a local agency making considered policy choices in its rate-setting, so long as no class of customers is charged more than its costs of service and unrestricted funds are used to support rate differentials among classes to the extent those differentials depart from strict cost-accounting. For this reason alone – because property-related fees and charges are not the only way for a local agency to support a given service – it cannot be that Section 75594 is impossible to reconcile with Proposition 218 as a facial matter.

With respect to Proposition 26, the question is slightly different: an analysis of costs held up against what is charged to the ratepayer bears on the question of whether direct voter approval is required. Proposition 26

constraints on *local-agency* ratemaking obliterated the field of other *legislative* policy choices about water rates, although the City may wish it were so.[9]

Nor is this simply so many angels dancing on the head of a pin. As Farm Bureau argues below, there are many quantitative reasons that may support lower rates for agricultural water use than for municipal water use, and in a future California in which water resources and their use are ever more tightly scrutinized against the framework of statewide policy, it is

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doesn't say much at all about any particular rate structure – including the rate-setting parameters laid down by Section 75594 – other than to describe those fees or charges in excess of total cost of regulation, or those fees or charges which are not allocated on the basis of a particular payor's benefits or burdens from a particular government service, as a "tax" subject to voter approval. At heart, it is a voter approval requirement for fees and charges that exceed certain parameters, not an outright bar to a rate structure established by Section 75594 or any other similar statute.

[9] The Court below rightly distinguished between local-agency and legislative prerogatives in this regard. (Opinion, p. 24.) In point of fact, Section 75594 is no isolated legislative anachronism, as the City seems to imply. The Water Code contains other expressions of policy that clearly underscore the importance of agricultural water use. Water Code section 106, for example, states baldly that the domestic use of water – a much narrower category of human water use than the suite of municipal uses which the City provides, which includes water deliveries for landscaping – is the highest use of water, followed by irrigation as the second highest use of water. The point here is that voters, in enacting constraints upon local-agency ratemaking via Proposition 218 (or Proposition 26) at the ballot box, cannot possibly have been navigating a course through the Water Code, impliedly repealing statutes which are the considered policy expressions of the Legislature and which do no facial violence to the commands of Propositions 218 or 26.

likely that the value of agricultural water use will be discussed with increasing detail and vigor, as follows below.

D. The Agricultural Water Use Underpinned by Section 75594 Supports Benefits To All Californians

The Court should view with some skepticism the City's claims of "subsidy" in this case, as there are many farmers and ranchers who would make claims to the contrary, and in point of fact the farm-to-city connection provides a spectrum of mutual benefits that are identified not only in Section 75594, but in a number of other statutes, ordinances, and physical relationships.

For example, as Farm Bureau briefed at trial, the Williamson Act, which is California's premiere statutory protection for farmland, provides the following:

> (a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation. [...]
>
> (b) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents.

> (c) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments[...]

(Gov. Code, § 51220.)[10]

With respect to the City in particular, as Farm Bureau also pointed out at trial, its "Save our Agricultural Resources" ordinance, enacted by its residents and known otherwise as the "SOAR" initiative, is a striking expression of the value of agriculture to the City. It contains the following language:

> A. The protection of existing agricultural and watershed lands is of critical importance to present and future residents of the City of San Buenaventura (City of Ventura). *Agriculture has been and remains the major contributor to the economy of the City and County of Ventura*, creating employment for many people, directly and indirectly, and generating substantial tax revenues for the City.
>
> B. In particular, the City of Ventura and surrounding area, with its unique combination of soils, micro-climate and hydrology, has become one of the finest growing regions in the world. Vegetable and fruit production from the County of Ventura and in particular production from

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[10] See also, e.g., Pub. Resources Code, §§ 10200 et seq. ("California Farmland Conservancy Program Act"); Food & Agr. Code, §§ 802, 821, 822 ("Thurman Agricultural Policy Act"); Pub. Resources Code, § 21095 ("California Environmental Quality Act" or "CEQA") (provision on agricultural land conversions) and Cal. Code Regs., tit. 14, § 15000, *et seq.* ("CEQA Guidelines"), Appendix G.

> the soils and silt from the Santa Clara and Ventura rivers have achieved international acclaim, *enhancing the City's economy and reputation.*
>
> C. Uncontrolled urban encroachment into agricultural and watershed areas will impair agriculture and threaten the public health, safety and welfare by causing increased traffic congestion, associated air pollution, and potentially serious water problems, such as pollution, depletion, and sedimentation of available water resources. Such urban encroachment would eventually result in both the unnecessary, expensive extension of public services and facilities and inevitable conflicts between urban and agricultural uses.
>
> D. The unique character of the City of Ventura and quality of life of City residents depend on the protection of a substantial amount of open space lands. The protection of such lands not only ensures the continued viability of agriculture, but also protects the available water supply and contributes to flood control and the protection of wildlife, environmentally sensitive areas, and irreplaceable natural resources.

(9 Joint Appendix, Tab 79, page 1883.)

While those policy expressions relate to agricultural land use, the land-water nexus for the production of food and fiber could not be more obvious. Agricultural land, it goes without saying, is not capable of agriculture without water. And so does water law and policy recognize the importance of water to agriculture, from the common law respecting water rights to affirmative federal, state, and local infrastructure projects, which historically brought water to farms and ranches in the first instance. Indeed, there is no possible

conception of the public interest which does not identify the benefits of agriculture to the City, and that public interest is served by agricultural water and the policies inherent in statutes like Section 75594.

Finally, as was identified in the trial court, aside from the protection of food and fiber, there are a number of other system wide benefits that are supported by agricultural water use in a manner that water dedicated to M&I use typically does not. (9 Joint Appendix, Tab 78, at p. 1864, lines 13-17.) For example, the agricultural application of water to soils involves a measure of re-charge to aquifers. Surface runoff often results in re-use. Habitat and wildlife conservation are frequent ancillary beneficiaries. Scenic values are underpinned by water on agricultural landscapes. Truly, apart from the production of food and fiber in a $44 billion farm economy, there is abundant reason to suspect that Section 75594 is a matter of broad public interest to all Californians.

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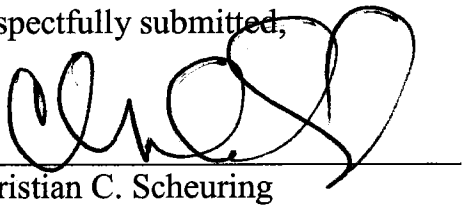
V. CONCLUSION

As briefed above, Farm Bureau respectfully submits that Water Code section 75594 is facially constitutional.

Dated: November 11, 2015

Respectfully submitted,

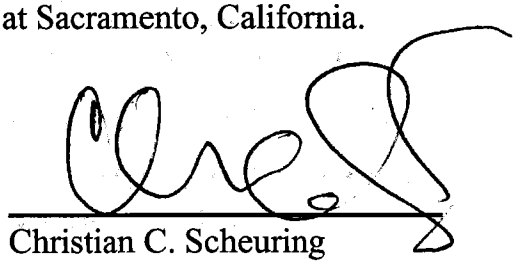


Christian C. Scheuring
Attorney for Farm Bureau of Ventura County

Certificate of Word Count

The foregoing Farm Bureau of Ventura County's Amicus Brief contains 3755 words (excluding this Certificate). In preparing this certificate, I relied on the word count generated by MS Word 2013.

Executed on November 11, 2015, at Sacramento, California.



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PROOF OF SERVICE

IN THE SUPREME COURT
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City of San Buenaventura v. United Water Conservation District, et al.
Case No. S226036

I, Dianne K. Chasteen, am employed in the County of Sacramento; my business address is 2300 River Plaza Drive, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 12, 2015, I served the following document:

APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE and AMICUS CURIAE BRIEF

on the parties in this action, at their addresses listed as follows:

SEE ATTACHED LIST

(Method of Service is indicated on attachment)

XX (By Mail) In accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope(s), with postage thereon fully prepaid for first-class mail, for collection and mailing at California Farm Bureau Federation, Sacramento, California, following ordinary business practices. I am readily familiar with the practice of California Farm Bureau Federation for collection and processing of correspondence – said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

XX (By E-Mail or Electronic Transmission) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing documents to be sent to the persons at the email addresses listed on the service list on November 11, 2015 from e-mail address: dchasteen@cfbf.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed November 12, 2015, at Sacramento, CA.

Dianne K. Chasteen

SERVICE LIST

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
City of San Buenaventura v. United Water Conservation District, et al.
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